



January 9, 2006

EX PARTE NOTICE

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Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Room TW-A325
Washington, DC 20554

Re: Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440

Petition for Limited Reconsideration of Title I Broadband Order by the Verizon Telephone Companies, CC Docket Nos. 02-33, 95-20, 98-10

Dear Ms. Dortch:

T-Mobile USA, Inc. (“T-Mobile”) urges the Commission to deny Verizon’s above-captioned petitions (the “Verizon petitions”) seeking deregulation of special access services. Specifically, the Commission should deny Verizon’s petition for forbearance from Title II of the Communications Act (the “Act”) and Computer Inquiry regulation for all of its broadband services,¹ to the extent that the Verizon forbearance petition applies to special access services. The Wireline Competition Bureau (“WCB”) recently extended the time for considering the Verizon forbearance petition to March 19, 2006,² even though BellSouth recently withdrew a similar forbearance request.³

¹ See Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440 (filed Dec. 20, 2004) (“Verizon forbearance petition”).

² See Petition of the Verizon Telephone Companies for Forbearance under 47 U.S.C. § 160(c) from Title II and Computer Inquiry Rules with Respect to Their Broadband Services, WC Docket No. 04-440, DA 05-3217 (WCB rel. Dec. 19, 2005) (“Extension Order”).

³ See Petition of BellSouth Telecommunications, Inc. For Forbearance under 47 U.S.C. § 160(c) from *Computer Inquiry* and Title II Common-Carriage Requirements, WC Docket No. 04-405 (filed Oct. 27, 2004) (“BellSouth petition”). BellSouth later withdrew the BellSouth petition, see Letter from Bennet L. Ross, General Counsel-D.C., BellSouth, to Marlene H. Dortch, Secretary, FCC, WC Docket No. 04-405, at 1 (filed Oct. 26, 2005).

The Commission also should deny Verizon's petition for reconsideration of the *Title I Broadband Order*,⁴ which, similar to the Verizon forbearance petition, inappropriately seeks to deregulate special access services.

T-Mobile has extensive experience as a customer of Verizon special access services provided in Verizon's local service territory. As a result of this experience, T-Mobile is concerned about the Verizon petitions because in Verizon's service area, T-Mobile relies predominantly on Verizon for high-capacity special access services as the links needed to knit together T-Mobile's network, from its cellular base stations to its mobile switching centers.⁵ There are few or no realistic alternatives to the use of these facilities.

The Petitions Apparently Cover Special Access Services. The Verizon petitions are framed broadly. The Verizon forbearance petition requests forbearance for "all broadband services" that Verizon "does or may offer."⁶ The Extension Order interprets the term "broadband" in the Verizon forbearance petition to mean "technologies that are capable of providing 200 Kbps (kilobits per second) in both directions."⁷ The Verizon forbearance petition apparently encompasses special access services - traditional circuit-switched special access services as well as those relying on packet switching and other technologies - because many such services are capable of providing transmission speeds of at least 200 Kbps in both directions. For example, T-Mobile routinely purchases DS1 (1.544 Mbps), DS3 (45 Mbps) and similar special access services from Verizon and other incumbent LECs.⁸

The Verizon reconsideration petition similarly seeks to remove Title II regulation from "stand-alone broadband transmission services, such as the ATM and Frame Relay services that Verizon sells primarily to large enterprise customers, to the extent that those services are not used for Internet access."⁹ Although, in a footnote, the Verizon

⁴ See Verizon Petition for Limited Reconsideration of Title I Broadband Order, CC Docket Nos. 02-33, 95-20, 98-10 (filed Nov. 16, 2005) ("Verizon reconsideration petition"); see also *Appropriate Framework for Broadband Access to the Internet over Wireline Facilities*, Report and Order and Notice of Proposed Rulemaking, FCC 05-150 (Sept. 23, 2005) ("*Title I Broadband Order*").

⁵ See Comments of T-Mobile, WC Docket No. 05-25, RM-10593 (filed June 13, 2005) ("T-Mobile Special Access Comments").

⁶ See Verizon forbearance petition at 2.

⁷ See Extension Order at 1, n.4. The Extension Order reasoned that the Verizon forbearance petition requests the same relief as the BellSouth petition, and looked to the BellSouth petition for a definition of "broadband." The Extension Order also noted that these services "include high speed Internet access provided using DSL technology." *Id.*, citing BellSouth petition at 1, n.2 (emphasis added in Extension Order). Nothing in the Extension Order, the Verizon forbearance petition, or the BellSouth petition indicates that the services at issue are limited to DSL services or to services provided using any other specific technology.

⁸ See Declaration of Chris Sykes at 1-2, attached to T-Mobile Special Access Comments as Attachment C.

⁹ Verizon reconsideration petition at 2.

reconsideration petition nominally excludes traditional “TDM-based special access services” from its request, it hastens to state that “packetized transmission services should not be denied relief simply because of any ‘TDM handoff’ required in order for these services to be compatible with legacy customer premises equipment.”¹⁰ The Verizon reconsideration petition therefore would apply, at a minimum, to special access services that use a “packet-switched or successor technology.”¹¹ As networks evolve to rely increasingly on packet technologies, the Verizon petitions seek deregulation for the types of special access services provided to customers like T-Mobile and other wireless carriers.

The Commission Should Deny The Verizon Petitions And Use The Special Access Rulemaking To Strengthen, Not Reduce Or Eliminate, Regulation Of Special Access Services. As T-Mobile and many other parties have explained at length in the pending *Special Access* rulemaking¹² and the wireline merger proceedings, the Commission should strengthen its Title II regulation of special access services substantially by reforming its pricing flexibility and price cap rules, which were adopted pursuant to Title II of the Act.¹³

The *Special Access* rulemaking with its comprehensive record, and not the Verizon petitions, is the proper vehicle for improving the regulation of special access services. Rather than granting the Verizon petitions, the Commission should follow T-Mobile’s recommendations to reform special access regulation by reducing pricing flexibility for those services and by strengthening their regulation under price caps.

Special Access Services Do Not Satisfy The Statutory Criteria For Forbearance From Title II. Because the Verizon forbearance petition does not satisfy the statutory criteria for forbearance with respect to special access services, the Commission should deny the petition. The need for improved regulation of special access services already established by T-Mobile in the *Special Access* proceeding conversely demonstrates that the Verizon forbearance petition does not satisfy the three forbearance criteria of Section 10(a) of the Act.¹⁴

¹⁰ *Id.* at 2, n.3. Verizon apparently envisions that the packetized portion of such a service would change the regulatory status of the service, contrary to the Commission’s approach in *Petition for Declaratory Ruling that AT&T’s Phone-to-Phone IP Telephony Services are Exempt from Access Charges*, 19 FCC Rcd 7457 (2004).

¹¹ See Verizon reconsideration petition at 2, n.3.

¹² See *Special Access Rates for Price Cap Local Exchange Carriers*, Order and Notice of Proposed Rulemaking, 20 FCC Rcd 1994 (2005) (“*Special Access*”).

¹³ See, e.g., T-Mobile Special Access Comments.

¹⁴ See 47 U.S.C. § 160(a).

- ? First, *strengthened* pricing flexibility rules and price cap regulation are necessary to prevent Verizon and other incumbent LECs from charging rates for special access that are unjust and unreasonable and from unjust and unreasonable discrimination.¹⁵ There is no basis for eliminating special access regulation altogether. T-Mobile has shown that current forms of regulation for special access service do not control the incentives or the ability of Verizon and other incumbent LECs to act anticompetitively against T-Mobile.¹⁶
- ? Second, *strengthened* pricing flexibility rules and price cap regulation of special access services are necessary to protect consumers.¹⁷ Consumers will be harmed if special access regulation is removed rather than improved. As T-Mobile has explained, robust special access regulation will promote wireless competition and intermodal competition to benefit consumers.¹⁸ Without robust regulation, Verizon and other incumbent LECs will be able to use their control of special access inputs to stifle the competition, with its benefits to consumers, that T-Mobile and others are seeking to provide.
- ? Third, forbearance from improved pricing flexibility rules and price cap regulation of special access services would be *contrary* to the public interest.¹⁹ Decreased or eliminated regulation of special access services would harm, not promote, competition.²⁰ T-Mobile and other wireless providers rely on ILECs for inputs to their wireless offerings and these ILECs have strong incentives to raise the price and degrade the quality of those inputs in order to protect their wireline dial tone offerings from wireless competition.²¹

T-Mobile recognizes that the Commission recently adopted certain conditions with regard to special access services in connection with the Verizon-MCI merger transaction.²² The Commission obviously has no grounds for forbearing from any of those merger conditions based on the Verizon forbearance petition, which was filed prior to their adoption. However, the existence of those merger conditions, most of which will expire no later than 30 months days after the merger closing date, does not justify Commission

¹⁵ See *id.* § 160(a)(1).

¹⁶ See T-Mobile Special Access Comments at 2-6.

¹⁷ See 47 U.S.C. § 160 (a)(2).

¹⁸ See T-Mobile Special Access Comments at 3-4.

¹⁹ See 47 U.S.C. § 160 (a)(3).

²⁰ See *id.* § 160(b).

²¹ See T-Mobile Special Access Comments at 4.

²² See *Verizon Communications Inc. and MCI, Inc.*, WC Docket No. 05-75, FCC 05-184, App. G (rel. Nov. 17, 2005).

Ms. Marlene H. Dortch

January 9, 2006

Page Five

forbearance from its pricing flexibility and price cap rules for special access services, which so badly need reform.

The Commission Also Should Deny The Verizon Reconsideration Petition. The infirmities of the Verizon forbearance petition demonstrate that the Commission should improve, not eliminate, its regulation of special access services. The Commission therefore should deny the Verizon reconsideration petition as well.

Other Services. With respect to services other than special access services that may be subsumed in the broad scope of the Verizon petitions, T-Mobile notes that there is a pending rulemaking to review regulatory requirements for incumbent LEC broadband telecommunications services.²³ T-Mobile suggests that rulemaking, rather than the Verizon petitions, to be the better vehicle for considering any changes to existing regulation of broadband telecommunications services other than special access services. Because that proceeding has been pending for over four years, T-Mobile suggests that the Commission request an additional round of comments and replies to refresh the record for rulemaking.

T-Mobile therefore respectfully requests that the Commission deny the Verizon petitions as described above. In accordance with Section 1.1206 of the Commission's rules, this letter is filed with your office for inclusion in the public record of the above referenced proceedings. If you have any questions regarding this *ex parte* notice, please contact the undersigned.

Sincerely,

/s/ Thomas J. Sugrue

Thomas J. Sugrue

Vice President, Government Affairs

T-Mobile USA, Inc.

²³ See *Review of Regulatory Requirements for Incumbent LEC Broadband Telecommunications Services*, Notice of Proposed Rulemaking, 16 FCC Rcd 22745 (2001).

Ms. Marlene H. Dortch

January 9, 2006

Page Six

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